

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:FS:LI:TL-N-3352-01
DRMirabito

date: August 10, 2001

to: Eugene Spitzer, Group Manager, Group 1347
Attention: James Hanson, Team Coordinator, LMSB

from: Jody Tancer, Associate Area Counsel
(Financial Services:Long Island)

subject: [REDACTED]

Refund claims for the fiscal year ended March 31, [REDACTED]

This responds to your memorandum dated May 15, 2001 requesting advice on whether [REDACTED] (or taxpayer) filed a timely second claim for abatement of interest due in the fiscal year ended March 31, [REDACTED]. This memorandum should not be cited as precedent.

ISSUES

1. Whether a Form 843, received by the Service on [REDACTED], pertaining to a request for abatement of deficiency interest due for the fiscal year ended March 31, [REDACTED] was timely?

2. If the Form 843 described above was not timely without reference to a prior timely filed Form 1120X, requesting a refund of a deficiency and interest thereon asserted for the same fiscal year, does the Form 843 relate to and/or amend the timely request?

CONCLUSIONS

1. The Form 843 pertaining to a request for abatement of deficiency interest due for the fiscal year ended March 31, [REDACTED] filed on [REDACTED] was not timely.

2. The Form 843 filed on [REDACTED] does not relate to or amend a timely claim for a refund of a deficiency and interest thereon asserted for same fiscal year.

FACTS

The facts, as we understand them, are as follows:

A BMF transcript of account dated [REDACTED] shows the following activity on the taxpayer's account for the fiscal year ended March 31, [REDACTED] as a result of a previous examination:

<u>Date</u>	<u>Amount</u>	<u>Type of Activity</u>
[REDACTED]	\$[REDACTED]	Estimated tax credit/FDT payment
[REDACTED]	[REDACTED]	Overpayment credit elect transferred to next period tax (subject of the second refund claim)
[REDACTED]	[REDACTED]	Return filed & tax liability assessed ¹
[REDACTED]	[REDACTED]	Advance payment of determined deficiency
[REDACTED]	[REDACTED]	Designated payment of interest
[REDACTED]	[REDACTED]	Overpayment transferred (debit for amount of overpayment credit transferred to another tax module)
[REDACTED]	[REDACTED]	Additional tax/deficiency assessment by Exam
[REDACTED]	[REDACTED]	Manually assessed interest transferred in
[REDACTED]	[REDACTED]	Abatement of interest assessed on additional tax/deficiency
[REDACTED]	[REDACTED]	Restricted interest abatement
[REDACTED]	[REDACTED]	Additional tax/deficiency assessment by Exam
[REDACTED]	[REDACTED]	Restricted interest assessment (manually computed) (subject of the first refund claim)

¹ Internal Revenue Code § 6072(b) required [REDACTED] to file its corporate income tax return for the fiscal year ended March 31, [REDACTED] on or before the 15th day of the third month following the close of the fiscal year. You have informed us that the return was timely filed on [REDACTED] pursuant to an extension.

Subsequent payment (subject of the first refund claim)

Generated interest due on overpayment

Refund of overpayment

As of , the balance of the account reads zero.

To summarize the relevant transcript activity, on , the Service assessed a deficiency in the amount of \$ and interest in the amount of \$ for the taxpayer's fiscal year ended March 31, . On , the taxpayer fully paid the deficiency but only \$ in interest; that is, interest in the amount of \$ was not paid as of . The deficiency resulted from the Service's disallowance of a \$ deduction claimed for a contribution to the taxpayer's 401(k) plan. Ultimately, the taxpayer made the payment as a result of the issuance of a notice of deficiency on for this 401(k) contribution.² To our knowledge, the taxpayer did not file any judicial petition or suit in response to the notice of deficiency.

These assessments totaling \$ and the payment on in the amount of \$ triggered the two subject refund claims:

1. The first claim, via a Form 1120X dated and received by the Service on , requested a refund in full of the assessed deficiency plus interest in the amount of \$ plus "interest on the overpayment of tax and interest as provided by law." The Rider attached to the Form 1120X, in summary, claims the refund is due because properly claimed a deduction for a contribution to the , a 401(k) plan. As we understand the circumstances, the first refund claim pertains to the two assessments and the payment.

2. The Form 843, received by the Service on (the second claim), claims a refund in the amount of \$ (amount computed as of). The Explanation section of the Form 843 states that the claim is for an abatement and refund of deficiency interest under the Avon Products Inc.

² The parties had agreed pursuant to Internal Revenue Code § 6501(c)(4) to extend the statute of limitations on assessment and collection until .

and May Department Stores opinions.³ According to the taxpayer, application of these decisions, Rev. Rul. 99-40, and numerous Field Service Advice memoranda results in an interest overcharge in the amount of \$[REDACTED]. The Form 843 specifically refers to the [REDACTED] overpayment credit elect transferred to next period tax in the amount of \$[REDACTED] and provides an analysis of when that overpayment was used on the fiscal year ended March 31, [REDACTED] and concludes that the overpayment was available on the fiscal year ended March 31, [REDACTED] until [REDACTED]. In response to the May Department Stores opinion, the Service now takes the position that for deficiency interest purposes, where a taxpayer does not initially designate a reported overpayment to satisfy a particular installment for the following taxable period, and crediting of the return overpayment is not needed to fully pay an installment of estimated tax due prior to the filing of the prior year's return, the reported overpayment will not be deemed to be credited to an installment of estimated tax due prior to the filing of the prior year's return. See The May Department Stores Co. v. United States, AOD/CC-1997-008 (August 4, 1997).

According to a Form 4564, Information Document Request, dated [REDACTED] under the name of Curt Davis, Team Coordinator, the Service intends to disallow the second claim on the ground that it was not filed within 2 years from the last date of payment ([REDACTED]) under Internal Revenue Code § 6511. The IDR requests further information from the taxpayer regarding its reasons for filing the [REDACTED] claim and the specific grounds on which [REDACTED] based its conclusion.

In its response to the IDR, the taxpayer takes the position that it did not have to specify on the first refund claim all of the grounds upon which interest should be refunded, that the Form 1120X constituted a timely claim for refund, and that the second claim merely articulated specific grounds for recovery of the interest and related back to the Form 1120X. [REDACTED] relies on the decisions in Alexander L. Loudfoot Co. v. United States, 197 Ct. Cl. 219 (1972), and the Claims Court decision in Deluxe Check Printers v. United States, 15 Cl. Ct. 175 (1988), aff'd in part and rev'd in part on other grounds, 885 F.2d 848 (Fed. Cir.

³ Counsel has not been asked for advice on whether the taxpayer is entitled to interest under those decisions, etc. or whether the taxpayer properly computed the amount of interest overcharged in [REDACTED]. Accordingly, this memorandum will not address either issue. In addition, we do not address whether the provisions of Internal Revenue Code § 6404, Abatements, apply.

1989), for its new position.

We understand that the audit team does not dispute that the first refund claim was timely as it was filed within 2 years of the last payment. We further understand that the Service intends to allow the first claim but we are not aware of when the taxpayer will be advised of such decision or the amount allowed. If the first claim is allowed in full, the issue of whether the second claim is timely becomes moot as the taxpayer will recover the amount of interest paid in full.

ANALYSIS

Issue 1. Whether the second claim was timely filed.

The period of limitations for recovery of an overpayment of tax and/or deficiency interest is found in Internal Revenue Code § 6511, the general refund limitations provision. § 6511(a) provides, in general, that a claim for refund of an overpayment of any tax in respect of which tax the taxpayer is required to file a return shall be filed within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever date expires later. § 6511 limits the amount of the refund as follows: where the claim is filed within the 3-year period in § 6511(a), the amount of the refund shall not exceed the portion of tax paid within 3 years plus the period of any extension of time for filing the return; however, if the claim is not filed within the 3-year period, the amount of the refund shall not exceed the portion of tax paid during the 2 years immediately preceding the filing of the claim.

█████ filed its Form 1120 for the fiscal year ended March 31, █████ on █████. Therefore, to be timely under the 3 year period of § 6511(a), a refund claim must have been filed on or before █████.⁴ Since the second claim was not filed

⁴ In the instant case, we do not think that the provisions of § 6511(c)(1) assist the taxpayer as to the second claim. That subsection of the statute states that the period for filing a claim for refund as provided in §§ 6511(a) and 6511(b) shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under § 6501(c)(4). Accordingly, any refund claim would have to be filed by █████ to be timely under § 6511(c)(1) since the parties agreed under § 6501(c)(4) to extend the period within which an assessment might be made for the █████ fiscal year until █████. However, the first claim would be timely under § 6511(c) as it was filed prior to

until [REDACTED], the amount of refund would be limited to the amount paid during the 2 years immediately preceding the filing of the claim under § 6511(b)(2)(B). However, since, according to the transcript of account, [REDACTED] last made a payment for the subject fiscal year on [REDACTED], the Service should not allow any portion of the second claim under § 6511. As noted, the first refund claim falls within the 2 year period and therefore is timely. However, to determine whether the second claim was timely despite the provisions of § 6511(a), further analysis, as set forth below, is necessary.

Issue 2. Whether the second claim was related to the timely filed first claim.

To summarize the parties' position on this issue, the taxpayer takes the position that since the timely first claim included a general, broad claim for interest, the subsequent Form 843, requesting a return of interest for the same fiscal year, relates to or amends the first claim and therefore is timely. To the contrary, the two claims may be seen as distinct claims with independent statutes of limitations since the second claim relies on a new ground and different facts for allowance. That is, in the Form 1120X, [REDACTED] took the position that because it was entitled to a claimed pension contribution deduction, no deficiency existed and therefore it had overpaid tax and interest. However, in the second claim, the taxpayer cited the opinions in May Department Stores et al. for its position that it had overpaid deficiency interest. Therefore, as discussed below, the second claim does not relate to or amend the timely first claim.

The statute of limitations for the first claim remains with that claim and is not transferred to a second claim where the subsequent claim is based upon new grounds. Allstate Insurance Company v. United States, 213 Ct. Cl. 96 (1977) (citing Charlson Realty Co. v. United States, 181 Ct. Cl. 262 (1967)). However, generally, the Service recognizes that when a taxpayer files a claim for refund of tax and the taxpayer has previously paid deficiency interest with respect to that tax, implicit in the claim for refund of tax is a claim for refund of associated deficiency interest. Accordingly, the taxpayer need not add "plus associated interest" or similar language to its Forms 1120X or 843. Indeed, as noted by [REDACTED] in its response to the IDR, the instructions to the Form 1120X states, "IRS will figure any

[REDACTED] (and would also be timely under § 6511(a) as it was filed within 2 years of payment).

interest due and will either include it in the refund" See Brandt & Brandt Printers v. United States, 300 F.2d 457 (Ct. Cl. 1962) (claim for refund of tax includes claim for refund of interest paid with respect to tax.)

Nonetheless, the Service interprets errors in the computation of interest that are not related to the reduction in tax (that is, errors that would provide an independent basis for a refund of interest, even if no tax were refunded) as not automatically incorporated in a tax refund claim. This interpretation is based on the generalization that a normal tax refund claim does not give notice that the taxpayer even desires a refund of interest on an independent ground, still less furnishes any information that could allow the Service to investigate that ground and determine whether additional interest should be refunded. See Angelus Milling v. Commissioner, 325 U.S. 293, 297-99 (1944) (the evidence should be clear that the Commissioner understood the specific claim made and it is not enough that somewhere the Service has information which might allow it to decide whether to allow the claim). Thus, the Service rejects the broad view that interest is always one, unitary "ground" for allowance and to raise the question of interest in any respect is to raise it in all respects.

Here, the timely first claim requested the return of \$ [REDACTED] in tax plus "\$ [REDACTED] interest paid plus interest on the overpayment of tax and interest as provided by law." Based on the analysis set forth above, we think this ground too sweeping to permit the Service to consider the untimely second claim as related to the timely first claim. However, additional analysis of whether the second claim amends the first claim is necessary.

A timely filed claim may be amended any time before it is rejected by the Service even if the period of limitations for filing a claim has expired. Under certain circumstances, the amendment and the original claim constitute a single claim. See United States v. Memphis Cotton Oil Co., 288 U.S. 62 (1933). An untimely amendment of a timely general claim is effective if: (1) the original claim has not been rejected at the time the amendment is filed; and (2) the amendment merely makes clear specific matters the Service has already considered by investigating the original claim, defective merely in its form. Id. Where both requirements are met, and only where both requirements are met, the untimely amendment and timely original claim constitute a single timely claim as the Service has not been asked to make any different inquiry than the one already made.

Please note that whether entirely new grounds are raised in a purported amendment of a timely claim depends on the facts of the situation. If the facts upon which the amendment is based would necessarily have been ascertained in determining the merits of the original claim, the amendment is proper. See Pink v. United States, 105 F.2d 183 (2d Cir. 1939). Thus, where the second claim raises a new legal theory, but was based on essentially the same facts as the first claim, the taxpayer merely offers an alternative characterization of the facts. And, where the second claim does not require examination of new matters that would not have been disclosed by an investigation of the original claim, the amendment is proper. See True Bros., Inc. v. United States, 93 F. Supp. 107 (D. Mass. 1950); General Outdoor Advertising Co., Inc. v. United States, 137 Ct. Cl. 607, cert. denied, 355 U.S. 891 (1957); Weisbart v. United States, 2000-2 U.S.T.C. ¶ 50,641 (2d Cir. 2000). Based upon the summary of facts in the first paragraph in this section, we do not think [REDACTED]'s second claim amends the timely first claim as the Service must undertake different inquiries and consider different facts in reviewing the two claims.

As noted above, the taxpayer, in its [REDACTED] response to the IDR, relies on the Alexander Proudfoot and Deluxe Check Claims Court cases as support for its position that the second claim related back to the first claim. Although we agree with [REDACTED] that Alexander Proudfoot stands for the limited proposition that a tax liability and deficiency interest may be recovered in the same proceeding, we do not think the rest of the case pertains here. Rather, the Court held that the twin devices of the refund claim and the provisions of Internal Revenue Code § 6601(f) are entrenched in federal tax law, are well known to informed taxpayers, and serve purposes Congress deems important. Thus, the Court required compliance with the requirements of § 6511 even though the validity of the underlying tax was not in issue (as in [REDACTED]'s second claim).

Similarly, we agree with the Deluxe Check Claims Court opinion to the extent that the Court reasoned that a claim for refund of tax normally incorporates a claim for deficiency interest. However, the Service takes the position that the Court went beyond that general proposition when it held that interest was refundable even though the underlying amount was not refundable since it viewed the tax in issue (self-dealing tax under Internal Revenue Code § 4941) as a penalty. Our position is that the Court holding that this arguably independent ground of recovery was timely raised was based on several questionable premises, for example, that the Service intentionally assessed interest knowing that to do so was illegal or that the taxpayer's failure to assess interest against itself equaled a statement that it did

not owe interest. Further, the Court failed to reconcile its holding with its earlier decision in John B. Lambert & Associates v. United States, 212 Ct. Cl. 71 (1976), in which it reached essentially the opposite result on similar facts. In any event, we think the decision in Deluxe Check distinguishable from the instant case since here the Service has not intentionally overassessed interest and [REDACTED] cannot be said to have denied liability for interest by failing to assess interest against itself. That case may also be distinguished from the circumstances here as the issue in Deluxe Check was whether any interest should have been charged while here the taxpayer disputes the amount of interest assessed.

This opinion is based upon the facts set forth herein. It might change if the facts are determined to be different. If the facts change, this opinion should not be relied upon. Please note that under routing procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office, which should be in approximately 10 days. In the meantime, the conclusions reached in this memorandum should be considered to be only preliminary.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

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By: _____
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